

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES REILLY

Plaintiff,

v.

Case No. 19-11249
Honorable Linda V. Parker

TIM DONNELLON, et al.,

Defendants.

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**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE’S
JANUARY 12, 2023 REPORT AND RECOMMENDATION; (2) GRANTING
DEFENDANT SPENCER AND TARRAH LNU’S MOTION FOR
SUMMARY JUDGMENT; AND (3) SUA SPONTE DISMISSING
WITHOUT PREJUDICE PLAINTIFF’S CLAIMS AGAINST DEFENDANT
“JOHN DOE”**

Plaintiff initiated this pro se civil rights lawsuit on April 30, 2019, asserting claims arising while she was an inmate at the St. Clair County Detention Center. (ECF No. 1.) In subsequent opinions and orders, Plaintiffs claims were dismissed against all defendants except Colleen Spencer, Tarrah LNU, and “John Doe.” (*See* ECF Nos. 7 & 113.) Spencer and Tarrah LNU filed a motion for summary judgment on May 31, 2022. (ECF No. 110). The matter has been referred to Magistrate Judge Curtis Ivy, Jr. for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A)

and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 55.)

On January 12, 2023, Magistrate Judge Ivy issued a Report and Recommendation (“R&R”), in which he recommends that the Court grant the pending motion. (ECF No. 122.) At the conclusion of the R&R, Magistrate Judge Ivy advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at Pg ID 1320-22.) Magistrate Judge Ivy further specifically advises the parties that “[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.*) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Ivy. The Court therefore adopts the R&R. The Court also is sua sponte dismissing without prejudice Plaintiff’s claims against Defendant John Doe.

“Courts generally permit the use of fictitious names when the only way a plaintiff can obtain the name of a defendant who has harmed him is through the discovery process in a case filed against that defendant as an unnamed party.”

Plant v. Various John Does, 19 F. Supp. 2d 1316, 1320 (S.D. Fla. 1998) (citing *Rodriguez v. City of Passaic*, 730 F. Supp. 1314, 1319 n.7 (D.N.J. 1990)).

Nevertheless, a plaintiff bringing a claim against a “John Doe” defendant must

make a reasonably diligent search to ascertain his or her identity. *See Figueroa v. Rivera*, 147 F.3d 77, 82-83 (1st Cir. 1998) (dismissing the plaintiff's claims against "John Doe" defendants under Federal Rule of Civil Procedure 4(m) where "in the seventeen months that elapsed between the filing of the complaint and the entry of judgment, the record disclosed no attempt by the plaintiff to identify or serve any of the anonymous defendants") (brackets omitted); *Plant*, 19 F. Supp. 2d at 1320; *Haddad v. Fromson*, 154 F. Supp. 2d 1085, 1093 (W.D. Mich. 2001). This case has been pending for almost four years. The discovery deadline expired on August 12, 2021. Plaintiff does not appear to have engaged in efforts to identify the John Doe Defendant. She certainly has not sought leave to amend the Complaint to name this defendant.

Accordingly,

IT IS ORDERED that Defendant Spencer and Tarrah LNU's motion for summary judgment (ECF No. 110) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's claims against Defendant John Doe are sua sponte **DISMISSED WITHOUT PREJUDICE**

s/ Linda V. Parker

LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: February 2, 2023

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, February 2, 2023, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan

Case Manager